



Filed electronically via www.fcc.gov/ecfs

November 10, 2017

Ajit Pai
Chairman
Federal Communications Commission
445 12th St., S.W.
Room TW – A325
Washington, D.C. 20554

Re: CG Docket No. 02-278
Credit Union National Association Petition for Declaratory Ruling Under the Telephone Consumer Protection Act of 1991

Dear Chairman Pai:

On behalf of Vibrant Credit Union and all of our members, I would like to thank you for the opportunity to comment on the Credit Union National Association (CUNA) Petition for Declaratory Ruling Under the Telephone Consumer Protection Act of 1991 (TCPA) ("Petition"). Vibrant is headquartered in the Quad Cities area along the Illinois/Iowa border and we serve members in Illinois, Iowa, Wisconsin and Indiana. In the last few years we have changed our name, changed our culture and we're hoping to change the financial services industry with outstanding service to our members and a healthy dose of fun.

We have recently struggled through creating and altering systems, business practices, forms and procedures in order to achieve TCPA compliance so we can speak from direct experience about the current environment and the impact the TCPA has as the rules are currently interpreted. I actually tend to agree with many of the commenters opposing the Petition in that the rules, in reality, are not a maze, but crystal clear. The rule is, "do not call or text anyone." The simple truth is that the 2015 Omnibus Ruling made every modern telephony system an autodialer, which makes every single call or text message a "robocall" even when there is a live person calling a specific member and physically dialing a phone number on desk phone. However, because that phone is integrated into a Voice Over IP (VOIP) system, it is "capable" of being used as an autodialer which then triggers the stringent proof of express consent and strict liability provisions of the TCPA for phone calls that were never the intended target of the initial statute and implementing regulations from more than 25 years ago.

I can personally attest that explaining the current state of the regulations and interpretations were met with incredulity by our leadership. Statements like, "that can't possibly be the rule, that's absurd" and "there's no way that anyone is complying with this because it's impossible" were made. Many commenters have suggested that it's "easy" for credit unions to just obtain and track consent, however that is simply not true. This regulation has required changes to our membership forms, creation of new forms, changes to our system in order to create fields for proper tracking, etc. Additionally, as others have mentioned, consumers use their cell number interchangeably as their "home" number so this requires a fundamental change in educating our members that we really need to know whether their phone number is a landline or a mobile phone. Once we went through all of this, then there is the question of

how do we contact existing members to get their consent to contact them?? Certainly not by calling them!

It is also certainly understandable why the plaintiff's bar vehemently opposes any changes because the strict liability and statutory penalties put them in a very enviable position. As a hypothetical, let's just suppose a credit union, after going through a thorough review, and a painstaking and costly implementation of what they reasonably believe is a fully TCPA compliant system, were to go ahead and call each of their members, just once, to check in and see if there is anything they can do for them. If a lawsuit were filed alleging that they were not, in fact, compliant and violated the TCPA they would be facing potentially ruinous damages. Using our own membership for the example, we have approximately 40,000 members so even one call to each member at \$500 per phone call would be \$20,000,000 in statutory damages should we go to trial and lose. Even as a relatively large credit union with over \$600,000,000 in total assets, this would immediately make us severely undercapitalized prompting regulatory action by our insurer, the NCUA, and would be the end of our credit union. And if we called each member a couple times a year over a two year period the potential damages could be over \$100,000,000. However, we can survive by settling the case for \$4,000,000, so a check gets written, probably with little to no regard to our actual compliance with the law.

These types of regulations are also becoming increasingly complicated by varying courts' rulings regarding the interpretation of "consent." When is consent "express?" What qualifies as "written consent?" Is language contained within the Account Terms and Conditions granting this consent sufficient? Does it have to be above the signature line? Is a check box that the member checks sufficient? Does it have to be on an entirely separate form? While this might even seem reasonable in a vacuum, there are literally dozens of consents, disclosures and notices that are now required and so combined they all become noise and how do we prove that this one rose above the din and the consumer truly, expressly, with knowledge and fully formed consent agreed to this particular term? As noted by many other commenters the CFPB is also pushing for "real time" information to be pushed out. It's almost as if there is a conspiracy to create liability by mandating communications that violate another regulation with statutory penalties.

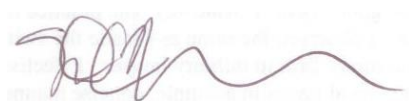
The reality is that in modern times, businesses use modern VOIP systems, because of their efficiency and lower costs which are ultimately passed on to our owner members, and consumers use mobile phones. While we fully support the petition by CUNA, while also believing there should be reasonable rules regarding truly mass-produced communications, there are more fundamental problems with the existing state of the implementing regulations of the TCPA. For one, they simply do not reflect the shift that has occurred in phone technology and usage from 1991 until now. Virtually all phone calls and text message are included in cell phone plans now, and cell phones are the primary path of communication with the landlines that are still in use being primarily backups. Technology is such that we have the ability to push real time data and give consumers unprecedented control and knowledge about their finances. However, a burdensome, and potentially lethal in a business sense, regulation strongly deters these types of communications.

We strongly support a person's ability to control the communications they wish to receive and consumers should absolutely maintain the ability to opt out of any communications they do not want. It is easier than ever for someone to reply to a text with "stop" or for us to ask over the phone if a member minds that we called. If someone gives a phone number on an application or a member agreement, then it reasonably follows that that is a reasonable method to contact that person. Moreover, we have every reason to treat our members well because they have plenty of options in the marketplace if we don't. As it stands though, there are high barriers to gaining, and documenting, that consent was given,

and a virtual Russian roulette if you decide to call your members, or send them text updates. The original intent of Congress cannot possibly have been to put companies out of business for contacting their clients.

In conclusion, we ask that you not only act favorably upon the Petition, but that the Commission more broadly consider the recent interpretations of the law and regulations. There is a clear distinction between mass telemarketing and dropping millions or billions of unsolicited, pre-recorded messages and businesses communicating with their clients. While there are certainly many unwanted phone calls and complaints filed about them, they are by and large not coming from good actors. These are people who are flouting the law, are fraudsters or even internationally based and simply outside the reach of US authorities. Tools such as an Existing Business Relationship certainly make sense in differentiating between wanted and unwanted calls and would certainly be warranted in the case of credit unions. Thank you for your consideration of our views.

Best regards,



Steven C. Haubner, Esq.
Vice President of Strategy

